THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS.1751 AND 26065 OF 1998

COMMON ORDER: (Per TCSR,J)

Inasmuch as both these writ petitions are emanating from a common Judgment dated 16.10.1997 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, and as the parties are same, both these writ petitions can be disposed of together.

The writ petitioner is the unsuccessful respondent in L.G.C.No.118 of 1989 and L.G.C.No.16 of 1990. The State represented by the Mandal Revenue Officer, Golconda, Hyderabad, filed L.G.C.No.118 of 1989 against the writ petitioner as the sole respondent for declaration that the respondent is a land grabber and for his eviction. L.G.C.No.16 of 1990 was also filed by the State against one A.S.Bose as first respondent and the writ petitioner as second respondent seeking the same relief. L.G.C.No.87 of 1996 was also filed by the State against one S.Jankiram as first respondent and the writ petitioner as second respondent seeking the same relief. A joint trial was conducted in all the three cases and evidence was recorded in L.G.C.No.118 of 1989 and the same was read as evidence in the other two cases. As aforesaid, a common Judgment was delivered. These two writ petitions are directed against that part of the judgment pertaining to L.G.C.No.118 of 1989 and L.G.C.No.16 of 1990 alone.

The case of the applicant in brief is as follows: – The land in dispute is part and parcel of survey No.403-Part (originally survey

No.129 old) situate at Road No.12, Banjara Hills, Shaikpet village, Hyderabad. Shaikpet village was an Ex-Sarfekhas village till 1948 which was merged in Government as per Sarfekhas Merger Regulations, 1358 Fasli. Consequently Shaikpet village is at present in the newly formed Shaikpet Mandal of Hyderabad District. Initially, survey of Shaikpet village was conducted in 1326 Fasli and its Sethwar was prepared in 1330 Fasli. According to the said survey, there were 353 survey numbers in the entire Shaikpet village. Survey No.129 thereof covers the land admeasuring Ac.3288.29 guntas. It was classified as 'Tatti Khana Kancha' (Pasture Land). In 1331 Fasli a supplementary Sethwar was issued sub-dividing the land in survey No.129 into 10 sub-divisions, namely, survey numbers 129/1 to 129/10. The land covered by survey No.129/1 is an extent of Ac.3097.39 guntas classified as 'Tatti Khana Kancha'. The lands covered by surveyNos.129/2 to 129/10 admeasuring Ac.190.03 guntas were patta lands. Again in 1334 Fasli another supplementary Sethwar was issued in which survey No.353 was deleted. Again in 1346 Fasli another supplementary Sethwar was issued. All sub-divisions, namely, survey Nos.129/1 to 129/10 were deleted and 52 new survey numbers were added as 353 to 404 covering an area of Ac.3288.29 guntas. The land earlier covered by survey No.129/1 admeasuring Ac.3097.39 guntas, as per the present Sethwar, is covered by survey No.403. During Sarfekhas regime, revision survey was taken up in 1347 Fasli and completed in 1352 Fasli. However, the said survey was not implemented. It was found that the extent covered by survey No.403 was reduced to Ac.2967.29 guntas. During 1965, Town Survey of Twin Cities was taken up and the same was duly notified in the Gazette of 1979 under the provisions of the A.P. Survey and Boundaries Act, 1923. According to the said survey, Shaikpet village was divided into 4 wards, 52 blocks and in the said survey land in dispute was classified as 'Government land' covered by survey No.19, Ward No.12, Block-K, corresponding to survey No.403-Part situate at

Road No.12, Banjara Hills, Shaikpet village, Golconda Mandal, Hyderabad District.

The respondent encroached the Government land in survey No.403-Part in an extent of Ac.15.00 situate at Road No.12, Banjara Hills and another land in an extent of 2839 square meters covered by T.S.No.19/1, Ward No.12, Block-K, Road No.12, Banjara Hills. Hence they are sought to be evicted.

The first respondent in L.G.C.No.16 of 1990 remained *ex parte*. The second respondent therein is also the respondent in the other L.G.C. He alone contested both the petitions. His case was that the land in an extent of Ac.25.00 covered by survey No.129 of Shaikpet village was granted 'Attai' patta under letter No.2152 dated 19th Khurdad, 1339 Fasli and letter No.2425 dated 25th Amardad, 1340 Fasli by Nawab Waheed Jung Bahadur, Awal Talugdar, Zilla Atraf Balda, Sarfekhas Mubarak. Ever since the grant of patta, the respondent has been in continuous and uninterrupted possession and enjoyment of the said land which includes land in dispute in his own right even prior to 1339-1340 Fasli. He has been agitating for demarcation of the said land and for issuance of consequential supplementary Sethwar and for effecting necessary changes in the Revenue Records. The original document of title in respect of the entire extent of Ac.25.00 granted to him was submitted to the Office of the Collector, Hyderabad, in 1960 in connection with demarcation and issuance of supplementary Sethwar and the receipt of the two documents was acknowledged by the Office of the Collector under the receipts bearing File No.G1/458/646/60 dated 26.07.1960 and File No.G1/458/646/60 dated 06.07.1960. However, no necessary supplementary Sethwar was issued in favour of the respondent. The respondent also issued a notice dated 20.10.1989 to the District Revenue Officer, Hyderabad, to enquire into the case and demanded return of the two original title deeds within a week. In the meanwhile, one R.Bhaskara Rao filed a suit O.S.No.90 of 1968 on the file of the II

Additional Judge, City Civil Court, Hyderabad, against the respondent and the respondent filed one of his title deeds for an extent of Ac.10.00. The said suit was eventually dismissed. However, it was found that the certified copy of the patta filed therein was genuine. The Judgment in the said O.S.No.90 of 1968 became final when the appeals filed against it ended in dismissal. The respondent developed a portion of the land out of Ac.25.00 granted to him into wet land by digging well and small tank. He has been running a silk industry in the said land and planted mulberry trees. Possession of the respondent was recognised and Sivai Jamabandi was levied by the Government from him. The respondent also established brick kiln after having obtained permission from the competent authority. Several taxes like non-agricultural land assessment, municipal taxes, have been levied from him and thus he perfected his title even otherwise by means of adverse possession and the application was barred by limitation.

The following issues were framed at the time of settlement of issues:

1) Whether the petitioner is the owner of the plaint schedule property?
2) Whether the rival title set up by the respondent is true and valid?
3) Whether the respondents are land grabbers?
4) Whether the respondents perfected title by adverse possession/
5) To what relief?

At the time of enquiry two witnesses were examined on the side of the applicant State and Exs.A.1 to A.23 were got marked. One witness on the side of the respondent petitioner was examined and Exs.B.1 to B.111 were got marked. Appreciating the evidence thus adduced on either side, the learned Special Court was of the view that Exs.B.7 and B.9, the certified copies of the pattas said to have been granted in favour of the respondent were not genuine and the pleas of the sole respondent that ‘Attai’ patta was granted in his favour under

the originals of Exs.B.7 and B.9 for an extent of Ac.25.00 of land was neither proved nor acceptable nor believable. Having regard to the fact that Sivai Jamabandi was levied, the learned Special Court rejected the plea of adverse possession. Eventually, it allowed both the applications filed by the State.

The learned counsel appearing for the writ petitioner represents that the clear and convincing evidence adduced on the side of the writ petitioner has erroneously been disbelieved by the learned Special Court; and that admittedly the petitioner has been in possession and enjoyment of the land in dispute since a long time by establishing silk factory and by developing sericulture and, therefore, in that view of the matter, the writ petitioner cannot be termed as land grabber.

The learned Special Government Pleader, on the other hand, represents that the land in dispute stands obviously registered in all the revenue records as Government land and the writ petitioner failed miserably to prove his title over the land in dispute and, therefore, his possession vis-à-vis the Government is nothing but unauthorized.

The land in an extent of Ac.25.00 is the subject matter of dispute in between the writ petitioner and the State. It is covered by T.S.No.19/1, Ward No.12, Block-K, Road No.12 of Banjara Hills in Shaikpet village within Golconda Mandal. It goes by the local name as ‘Tatti Khana Kancha’ meaning thereby ‘Pasture Land’. While the State claims it as its land, the writ petitioner claims that he is the pattadar thereof, patta having been granted in his name by late Nizam under two different orders. Having regard to the rival claims as regards the title over the land in dispute, it is to be seen that in whom the title is vested. Shaikpet village in which the land in dispute is situate is obviously a Sarfekhas village. All the Sarfekhas villages were merged in Divani (State) way back in 1358 Fasli under Sarfekhas Merger Regulations (1358 Fasli). There has been no gainsaying of the same. Thereafter the administration of the village was transferred and vested in the State Government and all the records pertaining to the village

administration were handed over to the Government at the time of merger. That is how the State came to be in possession of certain lands situate in Shaikpet village which was a former Sarfekhas village. The initial survey of Shaikpet village was conducted in 1326 Fasli (1916 A.D.). In the said survey, survey No.129 was classified as 'Tatti Khana Kancha'. In 1331 Fasli a supplementary Sethwar was issued. Again in 1346 Fasli supplementary Sethwar was issued. These supplementary Sethwars were issued after conducting due survey of the lands before final merger of the Sarfekhas with the Government of Andhra Pradesh. During the survey and settlement operations conducted by the State, survey No.129/1 was correlated to survey No.403 and was classified as 'Government land'. In the revenue records, the land in dispute which is part of survey No.403 stands registered as the Government land. The certified copy of khasra pahani, Ex.B.41; the certified copy of sesala pahani, Ex.B.42; and the certified copies of faisal patties, Exs.B.35 and 75; filed on the side of the respondent (writ petitioner) also clearly show that the land in dispute which is part and parcel of survey No.403 stands registered in the name of the State and, therefore, the State is the owner thereof. The writ petitioner claims that he was granted 'Attai' patta under two different orders – one in respect of Ac.10.00 of land and the other in respect of Ac.15.00 of land, total ad measuring Ac.25.00 of land by the late Nizam. He claims that by means of a letter No.2152 dated 19th Khurdad, 1339 Fasli and by means of a letter No.2425 dated 25th Amardad, 1340 Fasli by Nawab Waheed Jung Bahadur, granted 'Attai' patta to him. Obviously, the writ petitioner was minor by then. The object behind such grant, according to the writ petitioner, was his late grandfather taught Arabic language to the heirs of late Nawab. These two alleged grants relate back to 1339 Fasli and 1340 Fasli equivalent to 1929 A.D. and 1930 A.D. There has been no reference of these grants either in the initial survey conducted or the subsequent supplementary Sethwars issued in respect of Shaikpet village. At the

time of merger of Sarfekhas village when the record was handed over to the State, the records obviously do not contain any mention about the alleged grants in favour of the petitioner. The writ petitioner is strongly relying upon Exs.B.7 and B.9 the alleged copies of the original title deeds. Exs.B.7 and B.9 have been held to be spurious documents by the learned Special Court buttressed by reasons assigned therefor by it. In the absence of Exs.B.7 and B.9, it is obvious that the petitioner cannot prove his title over the land in dispute. Therefore, the petitioner places strong reliance upon Exs.B.7 and B.9. Notwithstanding the reasons given by the learned Special Court and the conclusions reached by it at the end that these documents are not genuine, it may be considered here about the authenticity of these two documents.

As discussed hereinabove, the original grants i.e. the originals of ExsB.7 and B.9 pertain obviously to 1929 A.D. and 1930 A.D. In all probability, necessary mutation should have been made during that period itself in the name of the writ petitioner. Admittedly, the petitioner was a minor by then. It might be that patta was granted in the name of the minor grandson at the instance of his grandfather and, therefore, the minority of the petitioner at the time of the original grant was of no much significance. But subsequent changes which ought to have been made so soon after the grant have obviously not been made and the inaction on the part of the petitioner and his late grand father gain any amount of significance under the circumstances. The records pertaining to the period preceding the merger of Sarfekhas under Sarfekhas Merger Regulations, 1358 Fasli, therefore, do not show the name of the petitioner as the pattadar of the land in dispute. Even the subsequent survey conducted after the merger by the State also does not show the name of the petitioner. No effort has been made whatsoever till 1960 to get the necessary mutation effected in the revenue records. These circumstances which are innate and emerging from the record arouse any amount of suspicion on the authenticity of

the originals of Exs.B.7 and B.9. The original grants were not coming forth before the Court. The explanation offered in regard thereto seems to be that the originals were filed before the Collector requesting for mutation. Unfortunately, the writ petitioner could not get back the originals again from the Collector's office. The documents sought to be produced by the writ petitioner are only to show that he filed the original grants before the Collector and receipts were issued in proof thereof and that he filed those receipts before the Civil Court which again issued a certified copy but the fact remains that the originals of Exs.B.7 and B.9 are not forthcoming before the Court. Even in the subsequent revenue enquiries made at the instance of the writ petitioner who appeared to have made a relentless effort by approaching the authorities and by filing necessary writ petitions before this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India for issuing the necessary directions to the authorities for effecting the necessary changes in the revenue records, the originals could be traced. The revenue authorities in the enquiries made by them started suspecting the genuineness of Exs.B.7 and B.9. Under these circumstances, the failure of the writ petitioner in taking appropriate steps in getting the necessary changes effected in the registers of Sarfekhas administration and after its merger with the State in the revenue records till 1960 gains any amount of significance. Ex.B.7 is obviously the certified copy. Admittedly, Ex.B.7 is not a certified copy of original patta. What was filed before the Civil Court was a copy of the original said to have been issued by the Office of the Collector, Hyderabad and the same was exhibited as Ex.B.47 in the suit. Ex.B.7 in the instant proceedings is a certified copy of the said Ex.B.47 filed in the suit. Although genuineness or otherwise of the Ex.B.47 cannot be doubted being the certified copy but the veracity of the document and its probative value shall have to be seen having regard to the fact that it is not the true copy of the original having been certified as such. As rightly observed

by the learned Special Court, the original has not seen the light of the day. Coming to Ex.B.9, it is a certified copy of the document filed in the suit O.S.No.90 of 1968. What had been filed before the Civil Court was obviously not the original. That was again a photocopy of the so-called original. Again it is a mystery as to what happened to the original. Although Ex.B.9 is the certified copy but it is obvious that it not the true copy of the original 'Attai' patta. Thus, the probative value of Exs.B.7 and B.9 have been considered by the learned Special Court and by assigning cogent reasons it jettisoned both the documents from consideration. We see no compelling reasons to interfere with the said conclusion reached by the learned Special Court on any ground of illegality or error or want of jurisdiction.

In the absence of Exs.B.7 and B.9, it becomes obvious that the title clearly vests with the State. The whole of survey No.403 stands registered as the Government land which clearly shows that the State is the owner of the land in dispute. The burden is very heavy on the writ petitioner to show before the Court that 'Attai' patta was granted in his favour prior to merger of Sarfekhas and, therefore, he is not the grabber.

In order to show that the writ petitioner has been making relentless efforts by approaching revenue authorities for the necessary mutation, the writ petitioner seeks to rely upon Exs.B.56, B.57, B.59, B.60 and B.61. Ex.B.56 is a letter dated 21.08.1965 seems to have been addressed by the Deputy Director to the Collector, Land Records, Hyderabad. It is recited *inter alia* in that letter that while enclosing a copy of the petition filed by the writ petitioner dated 17.08.1965 along with its enclosures, namely, certified copy of the patta document, court decision, pahani and tonch map the Collector was requested to instruct the Land Record Assistant to take necessary action in the matter. This letter shows that the writ petitioner approached the Deputy Director, Land Records, for necessary revision of the records. Ex.B.57 is a D.O. letter of the Commissioner, Survey,

Settlement and Land Records, dated 03.11.1980 addressed to the Director of Survey and Land Records, Hyderabad, whereunder the Commissioner requested the Director to take immediate action for demarcating the land of the petitioner as per his documents and the village accounts and for arranging to issue the necessary Sethwar. Ex.B.59 is a reply D.O. letter of the Director, Survey, Settlement and Land Records, Hyderabad, addressed to the Commissioner whereunder he informed the Commissioner that the Assistant Director, Traverse Survey Party, was instructed to verify the records in consultation with the Tahsildar, Urban on the petition filed by the writ petitioner. Ex.B.60 is a detailed letter of the Assitant Director prepared on the complaint filed by the writ petitioner. As per this document, in the survey and settlement operations, the name of the petitioner was not found recorded as pattadar against any of the sub-divisions carved out of survey No.129 (old) and survey No.403 (new) and pattas said to have been granted by the Collector of Atraf Balda, Hyderabad, in favour of the petitioner in respect of Ac.10.00 of land and Ac.15.00 of land covered by survey Nos.129 found to have not been implemented in the settlement records either before or after revision survey and revision survey was announced in 1352 Fasli and that from the detailed town survey of greater Hyderabad conducted during the year 1968 the writ petitioner's name was found as encroacher in T.S.No.19 of Block 'K' of Ward No.12 of Shaikpet village as against the Government poramboke land and the encroachment was treated as objectionable by the Special Deputy Collector, Hyderabad. Ex.B.61 is a letter addressed to the Secretary to the Government, Revenue Department by the Director of survey and Land Records, Hyderabad. It pertains to the complaint filed by the writ petitioner for not demarcating his land as private land covered by survey No.403 (new) and survey No.129 (old). In that report, the Director of Survey and Land Records has mentioned that the petitioner's name was found as encroacher as against town survey number correlated to old survey No.129/107

which was the Government land as per the revisional survey records of 1352 Fasli. That report shows that the Special Committee which was formed prepared its report and submitted its proposal to the Government for dealing with the encroachments. All this record clearly shows that the name of the petitioner stands registered as encroacher qua the land in dispute. When once his efforts have been found to be infructuous, the petitioner then moved the High Court by filing writ petition Nos.10582 of 1983 and 10799 of 1985. This Court by an order dated 28.03.1988 directed that an enquiry shall be conducted after giving notice to the petitioner qua the documents filed by the petitioner about their genuineness etc. and if they are found to be true, to direct the Director of Survey, Settlement and Land Records to demarcate the lands and issue supplementary Sethwar in respect of survey No.129 (old) and survey No.403 (new) as claimed by the petitioner. Pursuant to the said direction, the District Revenue Officer conducted an enquiry and by his order dated 27.07.1989 rejected the claim of the writ petitioner on the premise that the documents produced by him are xerox copies and they do not prove his title. The petitioner without filing an appeal qua the said order again approached this Court in W.P.No.15353 of 1989 which was disposed of directing him to file the necessary appeal. Accordingly, the petitioner seems to have filed an appeal before the Commissioner, Land Revenue, Hyderabad, on 28.12.1995 who after having heard the petitioner dismissed the appeal on 24.01.1996. As per the case of the State already land grabbing case has been filed as against the petitioner by then. That order of the Commissioner, Land Revenue, Hyderabad, dated 24.01.1996 was sought to be assailed by the petitioner by filing a Writ Petition No.3811 of 1996. The said writ petition was disposed of by a Division Bench of this Court on 24.03.2004. It was held by this Court that the Commissioner rightly confirmed the order passed by the District Revenue Officer. That in fact put an end to the efforts sought to be made by the writ petitioner before the Revenue Department and

Survey, Settlement and Land Records Department to get his name mutated as pattadar. The result of his efforts is obviously rejection of his claim as pattadar under 'Attai' patta of the land in dispute. When once the proceedings thus culminated in the rejection of the claim of the writ petitioner, it is obvious that the entries made in the revenue records and the survey, settlement and land records showing the State as the owner of the land in dispute have thus attained finality. The revenue authorities who conducted enquiry into the case of the petitioner rejected his claim as pattadar on the premise that the document sought to be produced by him are not genuine. This fact lends further support to the conclusion reached by the learned Special Court that Exs.B.7 and B.9 cannot be considered and shall have to be eschewed from consideration as not genuine documents. Therefore, the writ petitioner on whom the burden lies to show that he is not the land grabber qua the land in dispute which obviously stands recorded in the necessary land records as the Government poramboke land, failed to discharge his burden by showing cogent evidence that he is the pattadar of the land in dispute and the entries made in the revenue records are erroneous. Therefore, the learned Special Court has no option except to reach the conclusion, notwithstanding the fact the writ petitioner is in possession and enjoyment of the land in dispute since a long time, that he is an encroacher of the land in dispute.

The plea of adverse possession made by the writ petitioner has been rejected by the learned Special Court on the premise that he was found to be Sivai Jamadar and paid penalty as per the revenue records and on the own showing of the writ petitioner. Therefore, it was impermissible for him to raise the contention that he perfected his title by adverse possession. The conclusion reached by the learned Special Court that the possession of the petitioner was permissive, having regard to the fact that he paid Sivai Jama as levied by the State cannot be found fault with. Having regard to the fact that the writ petitioner who had set up independent title over the land in dispute

failed to establish the same and having regard to the fact that he paid Sivai Jama to the State for the land in dispute, therefore, he cannot legitimately set up the plea of adverse possession qua the State, we see no cogent reasons to conclude that the writ petitioner is entitled to any relief in the instant writ petitions.

It may be mentioned here that this Court is not sitting in appeal over the Judgment of the learned Special Court. Exercising certiorari jurisdiction, this Court has to see whether the Special Court acted in accordance with the procedure and has not committed any jurisdictional errors either by omitting to consider the relevant evidence or considered any irrelevant evidence. A detailed Judgment has been passed by the learned Special Court giving cogent reasons in support of its conclusions. Therefore, we see no reason to hold that the Judgment of the learned Special Court is in any manner erroneous, illegal and without jurisdiction. For the above reasons, both the writ petitions must fail.

In the result, Writ Petition No.1751/1998 and Writ Petition No.26065/1998 are dismissed. But, under the circumstances, no order as to costs.

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(T.CH.SURYA RAO,J)

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(G.CHANDRAIAH,J)

Dated 25th April, 2007

VGSR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS.1751 AND 26065 OF 1998

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DATED 25—04—2007

Shaik Ahmed Bin Amoodi
S/o Shaik Mohammed Amoodi,
Muslim, Aged 83 Years,
R/o H.No.327, Spl. (A) Class, Agapura,
Char Kandil, Hyderabad. ... Petitioner

v.

State of Andhra Pradesh, Rep. by
The Mandal Revenue Officer,
Golconda Mandal,
Hyderabad. And others ... Respondents